

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.30.1303 and 17.30.1330 pertaining to)	AMENDMENT
incorporations by reference and)	
concentrated animal feeding operations)	(WATER QUALITY)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On January 22, 2007, the Board of Environmental Review proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the board secretary no later than 5:00 p.m., January 2, 2007, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.30.1303 INCORPORATIONS BY REFERENCE (1) through (6) remain the same.

(7) The list of incorporations by reference follows:

<u>ARM 17.30...</u>	<u>33 CFR ...</u>	<u>Description of Regulation</u>
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(a) remains the same.

<u>ARM 17.30...</u>	<u>40 CFR ...</u>	<u>Description of Regulation</u>
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(b) through (i) remain the same.

(j) 1330	Part 412 (July 1, 2004 <u>2006</u> edition)	Concentrated animal feeding operation (CAFO) point source category effluent limitations and guidelines.
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(k) through (aj) remain the same.

<u>ARM 17.30....</u>	<u>16 US Code (USC)</u>	<u>Description of Fed. Statute</u>
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(ak) and (al) remain the same.

<u>ARM 17.30....</u>	<u>Clean Water Act</u>	<u>Description of Fed. Statute</u>
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(am) through (at) remain the same.

(au) 1322	40 CFR 122.21(i)(1) (July 1, 2004 <u>2006</u> edition)	Application requirements for concentrated animal feeding operations (CAFOs).
(av) 1330	40 CFR 122.23 (July 1, 2004 <u>2006</u> edition)	Definitions and permit requirements for concentrated animal feeding operations (CAFOs).
(aw) 1343	40 CFR 122.42(e) (July 1, 2004 <u>2006</u> edition)	Additional conditions applicable to concentrated animal feeding operations (CAFOs).

AUTH: 75-5-304, MCA

IMP: 75-5-304, 75-5-401, MCA

17.30.1330 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) through (5) remain the same.

~~(6) The board adopts and incorporates 40 CFR Part 122.23 (July 1, 2004 edition), which is a federal agency rule setting forth criteria for determining whether a facility or operation merits classification as a CAFO. See ARM 17.30.1303 for additional information about all materials incorporated by reference.~~

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The proposed amendments to ARM 17.30.1303 incorporate by reference the 2006 edition of the U.S. Environmental Protection Agency (EPA) rules applicable to concentrated animal feeding operations (CAFOs). The proposed incorporation by reference will adopt several new CAFO deadlines that EPA promulgated on February 10, 2006 (71 Federal Register 6978). In its February 2006 rules, EPA extended the date by which operations, which are defined as CAFOs as of April 14, 2003, and which were not defined as CAFOs prior to that date, must seek permit coverage. That date was extended from February 13, 2006, to July 31, 2007. EPA also extended the date for which operations that become CAFOs after April 14, 2003, must seek permit coverage. That date was extended from April 13, 2006, to July 31, 2007. Finally, EPA extended the deadline by which permitted CAFOs are required to develop and implement nutrient management plans. That date was extended from December 31, 2006, to July 31, 2007. The proposed amendments to ARM 17.30.1303 are necessary to ensure consistency between

state and federal CAFO rules, as required by 75-5-802, MCA. The proposed amendment to ARM 17.30.1330 eliminates a duplicative incorporation by reference. 40 CFR Part 122.23 has already been incorporated in ARM 17.30.1303(7)(av).

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than January 18, 2007. To be guaranteed consideration, mailed comments must be postmarked on or before that date. Written data, views, or arguments may also be submitted by fax to (406) 444-4386 or electronically via e-mail addressed to the board secretary at ber@mt.gov, no later than 5:00 p.m. January 18, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they shall make written request for a hearing and submit this request along with any written comments they have to the board secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov. A written request for hearing must be received no later than 5:00 p.m., January 18, 2007.

6. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be ten based on the number of concentrated animal feeding operations in the state.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; openpit mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to the board secretary at ber@mt.gov or may be made by completing a request form at any rules hearing held by the board.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BOARD OF ENVIRONMENTAL REVIEW

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

/s/ James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, December 11, 2006.